

REMARKS

Applicant has studied the Office Action of 27 January 2003 and provides these remarks to accompany the amendments. Before addressing the merits of the rejection, Applicant reviews the present invention and the reference.

Initially, Applicant corrects a typographical error in the specification. No new matter is added by this amendment.

The present invention is designed to facilitate the delivery of information to a mobile terminal user. The information delivered is based on the geographic location of the user. To this end, the present invention defines a locality. The localities are defined by example in several places in the specification as a business district, the city, a defined area about a point of presence (see page 6, lines 1-8) and the like (see also Figures 4A-4C). This locality is created without reference to the location of the servicing base station 18. Specifically, a single servicing base station 18 may have a plurality of localities within the communication range of the servicing base station, and the boundaries of the localities are different than and independent of the boundaries of the communication range of the base station that communicates with the mobile terminal.

The mobile terminal is equipped with some form of location sensing element, such as a GPS receiver. The mobile terminal reports its location as determined by the location sensing element to a locality server. The locality server determines if the mobile terminal is within a locality and provides content via the servicing base station to the mobile terminal based on the locality or localities within which the mobile terminal lies. While Applicant has argued the nature of the localities before, the claims were not explicit about what precisely was intended by the term "locality." Applicant has herein amended the independent claims to clarify the locality.

In contrast, the Stewart reference does not teach a locality *per se*. What Stewart teaches is a network of access points (called AP throughout the reference), each of which can communicate with the mobile terminal if the mobile terminal is within range of the access point. The location of the mobile terminal is inferred from the location of the access point that is, in fact, communicating with the mobile terminal (see column 3, lines 33-36). Based on the inferred location of the mobile terminal, content is provided to the user in the form of "notifying the user of canceled flights and adjustments to the user's itinerary" or updating the user's clocks (see column 3, lines 36-44). While this arrangement may be considered an abstract "locality," this

arrangement does not define a "locality" as Applicant uses that term. To avoid the assertion that the abstract locality of Stewart falls within a broad reasonable interpretation of the term "locality," Applicant has amended the claims to clarify what is intended by the term "locality."

Applicant now addresses the rejection proper. Claims 1-23, 25, and 26 were rejected under 35 U.S.C. § 102(e) as being anticipated by Stewart. Applicant respectfully traverses. Applicant has previously set forth the standard for an anticipation rejection with supporting case law in the appeal brief. Salient to the present discussion is that the reference must show the all the claimed elements arranged as claimed. *C.R. Bard Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1349 (Fed. Cir. 1998). This is a rigorous standard, and if a single claim element is not shown, then the claim is not properly anticipated. See also MPEP § 2131.

As amended, the independent claims 1, 12, and 23 all recite defining a locality as being independent of the servicing base station, and more particularly as being independent of a communication range of the servicing base station. In light of the previous disagreements over what a "locality" might be, Applicant trusts that this explicit recitation in the claim adequately addresses what the claimed locality is intended to be. While Stewart does inferentially determine the location of the user's mobile terminal based on which access point is communicating with the mobile terminal, there is no teaching within the reference that defines a locality as that term is defined in the claims. Furthermore, because there is no explicit locality, there is no association of content providers with the locality. Finally, because there is no explicit locality, there can be no determination if the mobile terminal is within the locality. Since these elements are not shown by the reference, the claims are not anticipated.

Applicant cancels claims 25 and 26, making the rejection of those claims moot.

Remaining claims 1-23 either include the limitations by virtue of being an independent claim with the limitation or their dependency from an independent claim with the limitation. Thus, the remaining claims are not anticipated by the reference of record.

Claims 11 and 22 deserve special mention as they are directed to the overlapping zone of acceptance concept. Even if the reference shows a locality (a point which Applicant does not concede), the reference does not show this zone of acceptance being exuded by the mobile terminal and content being provided to the mobile terminal if the zone of acceptance overlaps with the locality. To this extent, claims 11 and 22 are independently patentable.

Applicant requests reconsideration of the rejection of the claims in light of the amendments and arguments presented herein and claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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